

AMENDED IN SENATE MAY 12, 2011

AMENDED IN SENATE APRIL 27, 2011

SENATE BILL

No. 640

Introduced by Senator Runner

February 18, 2011

An act to add and repeal Sections 17053.50 and 23650 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 640, as amended, Runner. Income and corporation taxes: tax credit: employment.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, ~~until a specified date~~ *the last day of the calendar quarter within which the Franchise Tax Board estimates it will receive returns claiming credits that cumulatively total \$50,000,000*, under both laws, provide a tax credit, in an amount as specified, to a *qualified* taxpayer for each qualified employee, as defined, who actively received unemployment insurance benefits for 6 months immediately prior to the time the *qualified* taxpayer hires the qualified employee. *This bill would define a "qualified taxpayer" to mean a taxpayer that, as of the last day of the preceding taxable year, employed a total of 50 or fewer employees.*

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 California Employment Recovery Act of 2011.

3 SEC. 2. Section 17053.50 is added to the Revenue and Taxation
4 Code, to read:

5 17053.50. (a) For taxable years beginning on or after January
6 1, 2011, there shall be allowed as a credit against the “net tax,” as
7 defined in Section 17039, a qualified amount for each qualified
8 employee employed by ~~the~~ *a qualified* taxpayer in a qualified job
9 during the taxable year.

10 (b) For purposes of this section, the following definitions apply:

11 (1) (A) “Qualified amount” shall be equal to the sum of five
12 hundred dollars (\$500) per month for each qualified employee
13 employed by ~~the~~ *a qualified* taxpayer in a qualified job, multiplied
14 by the number of consecutive calendar months that ~~the~~ *a qualified*
15 taxpayer employs the qualified employee in a qualified job, but
16 not to exceed 12 consecutive calendar months. Where a qualified
17 employee has worked at least two weeks in a month for ~~the~~ *a*
18 *qualified* taxpayer and earned a gross salary of at least seven
19 hundred fifty dollars (\$750), the 12 consecutive calendar month
20 limitation may include two two-week pay periods. The qualified
21 amount for a two-week pay period shall be two hundred fifty
22 dollars (\$250).

23 (B) The aggregate qualified amount allowed for any qualified
24 employee shall not exceed six thousand dollars (\$6,000).

25 (2) “Qualified employee” means any person who actively
26 received unemployment insurance benefits for not less than six
27 months immediately prior to the time he or she was hired for the
28 first time by ~~the~~ *a qualified* taxpayer for a qualified job.

29 (3) “Qualified job” means a nonseasonal, full-time employment
30 position within the State of California that would qualify the
31 employee for benefits under the Unemployment Insurance Code,
32 not including any benefits received under Section 1279.5 of the
33 Unemployment Insurance Code, and result in a gross salary of not
34 less than one thousand five hundred dollars (\$1,500) in any month
35 in which ~~the~~ *a qualified* taxpayer seeks to apply the credit
36 authorized by this section.

1 (4) “*Qualified taxpayer*” means a taxpayer that, as of the last
2 day of the preceding taxable year, employed a total of 50 or fewer
3 employees.

4 (c) The credit allowed by this section shall be in lieu of any
5 other credit that ~~the~~ a *qualified* taxpayer may otherwise claim
6 pursuant to this part with respect to a qualified employee.

7 (d) In the case where the credit allowed by this section exceeds
8 the “net tax,” the excess may be carried over to reduce the “net
9 tax” in the following year, and the five succeeding years if
10 necessary, until the credit is exhausted.

11 ~~(e) This section shall remain in effect only until January 1 of~~
12 ~~the calendar year after the full calendar year in which California’s~~
13 ~~average unemployment rate falls below 10 percent, and as of that~~
14 ~~January 1 is repealed.~~

15 (e) (1) (A) A credit under this section and Section 23650 shall
16 be allowed only if it is claimed on timely filed original returns
17 received by the Franchise Tax Board on or before the cutoff date
18 established by the Franchise Tax Board.

19 (B) For purposes of this paragraph, the cutoff date shall be the
20 last day of the calendar quarter within which the Franchise Tax
21 Board estimates it will have received timely filed original returns
22 claiming credits under this section and Section 23650 that
23 cumulatively total fifty million dollars (\$50,000,000) for all taxable
24 years.

25 (2) The date a return is received shall be determined by the
26 Franchise Tax Board.

27 (3) (A) The determinations of the Franchise Tax Board with
28 respect to the cutoff date, the date a return is received, and whether
29 a return has been timely filed for purposes of this subdivision may
30 not be reviewed in any administrative or judicial proceeding.

31 (B) Any disallowance of a credit claimed due to a determination
32 under this subdivision, including the application of the limitation
33 specified in paragraph (1), shall be treated as a mathematical
34 error appearing on the return. Any amount of tax resulting from
35 such disallowance may be assessed by the Franchise Tax Board
36 in the same manner as provided by Section 19051.

37 (4) The Franchise Tax Board shall periodically provide notice
38 on its Internet Web site with respect to the amount of credit under
39 this section and Section 23650 claimed on timely filed original
40 returns received by the Franchise Tax Board.

1 (f) *The qualified taxpayer shall include with the timely filed*
2 *original return in a form and manner to be prescribed by the*
3 *Franchise Tax Board the title of the qualified job and the amount*
4 *of wages subject to Division 6 (commencing with Section 13000)*
5 *of the Unemployment Insurance Code paid by the qualified*
6 *taxpayer to the qualified employee.*

7 (g) (1) *The Franchise Tax Board may prescribe rules,*
8 *guidelines, or procedures necessary or appropriate to carry out*
9 *the purposes of this section, including any guidelines regarding*
10 *the limitation on total credits allowable under this section and*
11 *Section 23650 and guidelines necessary to prevent the avoidance*
12 *of the purposes of this section through split-ups, shell corporations,*
13 *partnerships, tiered ownership structures, or otherwise.*

14 (2) *Chapter 3.5 (commencing with Section 11340) of Part 1 of*
15 *Division 3 of Title 2 of the Government Code shall not apply to*
16 *any standard, criterion, procedure, determination, rule, notice, or*
17 *guideline established or issued by the Franchise Tax Board*
18 *pursuant to this section.*

19 (h) *This section shall remain in effect only until December 1 of*
20 *the calendar year after the year of the cutoff date, and as of that*
21 *December 1 is repealed.*

22 SEC. 3. Section 23650 is added to the Revenue and Taxation
23 Code, to read:

24 23650. (a) For taxable years beginning on or after January 1,
25 2011, there shall be allowed as a credit against the “tax,” as defined
26 in Section 23036, a qualified amount for each qualified employee
27 employed by ~~the~~ *a qualified* taxpayer in a qualified job during the
28 taxable year.

29 (b) For purposes of this section, the following definitions apply:

30 (1) (A) “Qualified amount” shall be equal to the sum of five
31 hundred dollars (\$500) per month for each qualified employee
32 employed by ~~the~~ *a qualified* taxpayer in a qualified job, multiplied
33 by the number of consecutive calendar months that ~~the~~ *a qualified*
34 taxpayer employs the qualified employee in a qualified job, but
35 not to exceed 12 consecutive calendar months. Where a qualified
36 employee has worked at least two weeks in a month for ~~the~~ *a*
37 *qualified* taxpayer and earned a gross salary of at least seven
38 hundred fifty dollars (\$750), the 12 consecutive calendar month
39 limitation may include two two-week pay periods. The qualified

1 amount for a two-week pay period shall be two hundred fifty
2 dollars (\$250).

3 (B) The aggregate qualified amount allowed for any qualified
4 employee shall not exceed six thousand dollars (\$6,000).

5 (2) "Qualified employee" means any person who actively
6 received unemployment insurance benefits for ~~at least~~ *not less*
7 *than* six months immediately prior to the time he or she was hired
8 for the first time by ~~the~~ *a qualified* taxpayer for a qualified job.

9 (3) "Qualified job" means a nonseasonal, full-time employment
10 position within the State of California that would qualify the
11 employee for benefits under the Unemployment Insurance Code,
12 not including any benefits received under Section 1279.5 of the
13 Unemployment Insurance Code, and result in a gross salary of not
14 less than one thousand five hundred dollars (\$1,500) in any month
15 in which ~~the~~ *a qualified* taxpayer seeks to apply the credit
16 authorized by this section.

17 (4) "*Qualified taxpayer*" means a taxpayer that, as of the last
18 day of the preceding taxable year, employed a total of 50 or fewer
19 employees.

20 (c) The credit allowed by this section shall be in lieu of any
21 other credit that ~~the~~ *a qualified* taxpayer may otherwise claim
22 pursuant to this part with respect to a qualified employee.

23 (d) In the case where the credit allowed by this section exceeds
24 the "tax," the excess may be carried over to reduce the "tax" in
25 the following year, and the five succeeding years if necessary,
26 until the credit is exhausted.

27 ~~(e) This section shall remain in effect only until January 1 of~~
28 ~~the calendar year after the full calendar year in which California's~~
29 ~~average unemployment rate falls below 10 percent, and as of that~~
30 ~~January 1 is repealed.~~

31 *(e) (1) (A) A credit under this section and Section 17053.50*
32 *shall be allowed only if it is claimed on timely filed original returns*
33 *received by the Franchise Tax Board on or before the cutoff date*
34 *established by the Franchise Tax Board.*

35 *(B) For purposes of this paragraph, the cutoff date shall be the*
36 *last day of the calendar quarter within which the Franchise Tax*
37 *Board estimates it will have received timely filed original returns*
38 *claiming credits under this section and Section 17053.50 that*
39 *cumulatively total fifty million dollars (\$50,000,000) for all taxable*
40 *years.*

1 (2) *The date a return is received shall be determined by the*
2 *Franchise Tax Board.*

3 (3) (A) *The determinations of the Franchise Tax Board with*
4 *respect to the cutoff date, the date a return is received, and whether*
5 *a return has been timely filed for purposes of this subdivision may*
6 *not be reviewed in any administrative or judicial proceeding.*

7 (B) *Any disallowance of a credit claimed due to a determination*
8 *under this subdivision, including the application of the limitation*
9 *specified in paragraph (1), shall be treated as a mathematical*
10 *error appearing on the return. Any amount of tax resulting from*
11 *such disallowance may be assessed by the Franchise Tax Board*
12 *in the same manner as provided by Section 19051.*

13 (4) *The Franchise Tax Board shall periodically provide notice*
14 *on its Internet Web site with respect to the amount of credit under*
15 *this section and Section 17053.50 claimed on timely filed original*
16 *returns received by the Franchise Tax Board.*

17 (f) *The qualified taxpayer shall include with the timely filed*
18 *original return in a form and manner to be prescribed by the*
19 *Franchise Tax Board the title of the qualified job and the amount*
20 *of wages subject to Division 6 (commencing with Section 13000)*
21 *of the Unemployment Insurance Code paid by the qualified*
22 *taxpayer to the qualified employee.*

23 (g) (1) *The Franchise Tax Board may prescribe rules,*
24 *guidelines, or procedures necessary or appropriate to carry out*
25 *the purposes of this section, including any guidelines regarding*
26 *the limitation on total credits allowable under this section and*
27 *Section 17053.50 and guidelines necessary to prevent the*
28 *avoidance of the purposes of this section through split-ups, shell*
29 *corporations, partnerships, tiered ownership structures, or*
30 *otherwise.*

31 (2) *Chapter 3.5 (commencing with Section 11340) of Part 1 of*
32 *Division 3 of Title 2 of the Government Code shall not apply to*
33 *any standard, criterion, procedure, determination, rule, notice, or*
34 *guideline established or issued by the Franchise Tax Board*
35 *pursuant to this section.*

36 (h) *This section shall remain in effect only until December 1 of*
37 *the calendar year after the year of the cutoff date, and as of that*
38 *December 1 is repealed.*

1 SEC. 4. This act provides for a tax levy within the meaning of
2 Article IV of the Constitution and shall go into immediate effect.

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